

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Princeton Place Rehabilitation & Healthcare Medical Center,
(CCN: 67-5205),

Petitioner,

v.

Centers for Medicare & Medicaid Services.

Docket No. C-09-701

Decision No. CR2098

Date: March 29, 2010

DECISION

For the reasons set forth below, I conclude that Petitioner, Princeton Place Rehabilitation & Healthcare Medical Center, is not entitled to Administrative Law Judge (ALJ) review of a determination made by the Centers for Medicare & Medicaid Services (CMS) following a July 9, 2009 survey. I therefore dismiss its hearing request pursuant to 42 C.F.R. § 498.70(b).

Petitioner has no right to a hearing because CMS did not impose a remedy.¹

Petitioner is a skilled nursing facility located in San Antonio, Texas, that participates in the Medicare program as a provider of services. On July 9, 2009, the Texas Department of Aging and Disability Services (State Agency) completed a survey of the facility and found that it was not in substantial compliance with federal requirements. By letter dated July 22, 2009, the State Agency (as authorized by CMS) advised Petitioner that, based on the survey findings, it would deny payment for new admissions effective October 9, 2009, unless the facility achieved substantial compliance prior to that date. CMS Ex. 1.

¹ I make this one finding of fact/conclusion of law.

On August 28, 2009, Petitioner timely filed its hearing request.

In the meantime, however, the State Agency revisited the facility and determined that it had corrected its deficiencies, so no penalties were imposed. CMS Ex. 2.

CMS now moves to dismiss Petitioner's hearing request. Petitioner has declined to respond to CMS's motion.

The hearing rights of a long-term care facility are established by federal regulations at 42 C.F.R. Part 498. A provider dissatisfied with an initial determination is entitled to further review, but administrative actions that are not initial determinations are not subject to appeal. 42 C.F.R. § 498.3(a). The regulations specify which actions are "initial determinations" and set forth examples of actions that are not. A finding of noncompliance that results in the imposition of a remedy specified in 42 C.F.R. § 488.406 is an initial determination for which a facility may request an ALJ hearing. 42 C.F.R. § 498.3(b)(13). But a facility has no right to a hearing unless CMS imposes one of the specified remedies. *Lutheran Home -- Caledonia*, DAB No. 1753 (2000); *Schowalter Villa*, DAB No. 1688 (1999); *Arcadia Acres, Inc.*, DAB No. 1607 (1997). The remedy, not the citation of a deficiency, triggers the right to a hearing. *Schowalter Villa*; *Arcadia Acres, Inc.* Where CMS withdraws the remedies, or otherwise declines to impose one, Petitioner has no hearing right. See *Fountain Lake Health & Rehabilitation, Inc.*, DAB No. 1985 (2005).

Because CMS has imposed no remedies, Petitioner has no right to an ALJ hearing, and this matter must be dismissed. 42 C.F.R. § 498.70(b). I therefore grant CMS's motion.

/s/
Carolyn Cozad Hughes
Administrative Law Judge